

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THOMPSON SAFETY, LLC	§ CASE NO. 4:24-CV-02483
v	§ HOUSTON, TEXAS
	§ THURSDAY,
JACE JONES, ET AL	§ AUGUST 8, 2024
	§ 4:03 P.M. TO 6:14 P.M.

INJUNCTION HEARING (VIA ZOOM)

BEFORE THE HONORABLE GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:	SEE NEXT PAGE
CASE MANAGER:	KIMBERLY PICOTA
COURTROOM ERO:	AARON JACKSON

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ALSO PRESENT:

David Roesler
Lee Winkelman
Jace Jones
Justin Jackson

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1 HOUSTON, TEXAS; THURSDAY, AUGUST 8, 2024; 4:03 P.M.

2 THE COURT: The next case on the Court's docket is
3 Cause Number 4:24-CV-2483, Thompson Safety, LLC versus Jones,
4 et al. Can counsel on the line or any of the parties that are
5 going to be representing themselves or speaking on the line,
6 if you could just introduce yourselves to the Court and state
7 who you represent or who you are, starting with the
8 Plaintiff's counsel.

9 MR. LOMBARDINO: Sure. Michael Lombardino on behalf
10 of Thompson Safety, the Plaintiff. And I also have with me in
11 my office is Christina Gad and Harry Phillips, and then David
12 Roesler is a fact witness who's prepared to --

13 (Glitch in the audio from 4:03:39 to 4:04:32)

14 THE COURT: -- agreements that I know about?

15 MR. LOMBARDINO: Well, the parties did submit an
16 agreed protective order and it tracks exactly your form order
17 which is made available, I'm not sure. But so we would
18 appreciate, even if it's not, quote/unquote, "signed" by you
19 now but if maybe you could adopt it orally and that way there
20 is confidential information that we can -- aren't confidential
21 and use.

22 And also I wanted to make sure that no one -- no
23 non-parties on the case because, you know, this will be a
24 clear the courtroom type thing in our view, at least on the
25 information we would need to actually discuss some of the

1 issues accordingly.

2 THE COURT: Okay. Okay. So is there any -- and so
3 there's agreement with respect to a protective order being
4 needed in this case? Does everybody agree? Defendants?

5 MR. CRESCENZO: Yes, Your Honor.

6 THE COURT: Okay. So if everyone's in agreement,
7 then I will enter the protective order. It is Docket Entry
8 Number -- one second -- I just need to pull it up -- well,
9 I'll just have the minute entry reflect that the docket entry
10 submitted by the parties in the Court -- to the Court is
11 approved and the Court will enter the order this afternoon.
12 So that's done.

13 Anything else that the parties agree on that might
14 help us move forward this afternoon?

15 (No audible response.)

16 THE COURT: Okay. Then what I need you to do,
17 Counsel, with respect to the injunction hearing is I
18 understand the arguments, I understand the trade secret
19 issues, I understand the case law. All I need to do is hear
20 the parties' testimony and determine the credibility of that
21 testimony, and if I have any questions, I'll ask you for
22 argument, but other than that, that's how we'll proceed.

23 So if the movant would like to call their first
24 witness.

25 MR. LOMBARDINO: Okay. Thank you.

1 And, Your Honor, I'd like to give courtroom
2 experience to younger attorneys, and so Ms. Gad will be
3 handling this part of the hearing if that's okay with you.

4 THE COURT: Great. Welcome, Ms. Gad. It's all
5 yours. You may call your first witness.

6 MS. GAD: Thank you, Your Honor.

7 I call Mr. David Roesler.

8 THE COURT: Okay. Mr. Roesler, if you could raise
9 your right hand, sir.

10 (Witness sworn.)

11 THE COURT: Thank you.

12 And you may place your hand down and Ms. Gad, you
13 may proceed.

14 MS. GAD: Thank you.

15 DIRECT EXAMINATION

16 BY MS. GAD:

17 Q Mr. Roesler, can you please introduce yourself?

18 A Yes, so I'm Dave Roesler, I am the Regional Business
19 Director for Thompson Safety.

20 Q And how long have you been employed with Thompson Safety?

21 A I was employed October of 2020.

22 Q And how long have you been the Regional Business
23 Director?

24 A Since April of 2023.

25 Q And what are some of your job duties as Regional Business

1 Director?

2 A So I support the west region and our locations that are
3 located in the West that we service first aid, safety and fire
4 extinguishers.

5 Q Okay. In your capacity as Regional Business Director did
6 you supervise or oversee the Defendants, Mr. Jones and
7 Mr. Jackson?

8 A Yes.

9 Q Okay. And we'll come back to that. But turning to
10 Thompson's business, what is Thompson's business?

11 A Yes, so we're a van-delivered first aid and safety and
12 fire company and so we protect customers, people and provide
13 life safety equipment to protect their assets as well, and we
14 do that with service technicians.

15 Q And where is Thompson's headquarters located?

16 A Houston, Texas.

17 Q And can you tell us a little bit more about the fire
18 extinguisher business and what that entails?

19 A Yes, so it involves monthly and annual inspections and
20 recertifications for fire extinguishers, maintenance of those
21 at respective intervals, and taking care of the customer.

22 Q And does Thompson have locations outside of Texas?

23 A Yes.

24 Q Can you name just a few?

25 A Yes, so Albuquerque, New Mexico; Phoenix, Arizona;

1 Denver, Colorado; Missouri.

2 Q And how does Thompson foster and build its goodwill with
3 its customers?

4 A Yes, so I guess a number of different ways. You know, we
5 have flat-rate billing, you know, transparency of invoicing,
6 you know, maintaining customer relationships. And so that
7 comes from providing, you know, excellent customer service,
8 and in our business we call that service excellence.

9 Q And how does Thompson generate new business?

10 A So we have an outside sales team that goes out and
11 prospects new business and they in turn transition that trust
12 over to our service organization that maintains that
13 relationship and expands on it.

14 Q And can you expand a little bit on who the service
15 organization would be within your company?

16 A Yes, so we have basically service representatives and
17 fire technicians, both of which are customer-facing and
18 service the customers on a routine basis, typically monthly.

19 Q And how long would you say it takes Thompson to foster
20 and build that goodwill with its customers?

21 A I mean, I would say it takes quite a bit, it's not -- you
22 can't just, you know, force a relationship. Right? So it's
23 something that's built over time and managed and maintained at
24 the service rep level.

25 Q And turning back to the Defendants, with regards to

1 Mr. Jones what was his job title?

2 A He also was a fire service technician.

3 Q And what are some of his job duties as a fire service
4 technician?

5 A Yes, so he's the face of -- he's the face of Thompson for
6 the customer. Right? So he is doing all the routine
7 maintenance, he's tagging extinguishers, and then most
8 importantly maintaining and building that customer
9 relationship.

10 Q And what about as to Defendant Mr. Justin Jackson?

11 A The same, yeah, he was a fire technician as well.

12 Q And are you familiar with a company, Sterling Safety,
13 Sterling First Aid?

14 A Yes.

15 Q Okay. And what is, or what was the relationship between
16 Sterling Safety and Thompson?

17 A They were a local competitor that did really the exact
18 same services that Thompson provided in the Houston market.

19 Q Okay.

20 MS. GAD: And I'm going to bring up on my screen, if
21 I may, Your Honor, what has been marked as Exhibit 1.

22 (Plaintiff's Exhibit No. 1 identified.)

23 MS. GAD: Oh --

24 THE COURT: Can you hold --

25 MS. GAD: -- (indiscernible).

1 THE COURT: I'm sorry, Ms. Gad, can you hold on? My
2 case deputy just stepped out, so I can't get down there to
3 give you access to the screen.

4 Do you have it?

5 MS. GAD: Okay.

6 THE COURT: I don't think you do.

7 MS. GAD: I don't. It's saying it's not sharing.

8 THE COURT: Right. She'll be right back. I'm sorry
9 to interfere with your examination. We'll take a short
10 recess.

11 Well, is there anything else that you could talk
12 about before that or -- I don't want to cut you off.

13 MR. LOMBARDINO: For one I guess (indiscernible)
14 good place to pause it. You know, as part of the TRO there is
15 a turnover requirement for devices and accounts, and that did
16 not happen, and still has not happened. So I know you wanted
17 to dive right into the testimony, but at some point I would
18 like to address that issue.

19 THE COURT: Okay. My case manager's back, Ms. Gad,
20 so she's going to give you access to the screen.

21 MS. GAD: Okay.

22 THE COURT: And then you can call up your exhibit
23 when you're ready.

24 MS. GAD: I see it now.

25 (Pause in the proceedings.)

1 BY MS. GAD:

2 Q May I call you Dave?

3 A Yes, yes, you can.

4 Q Dave, can you see my screen where it's showing the Asset
5 Purchase Agreement?

6 A I can.

7 (Glitch in audio at 4:13:19 p.m. to 4:13:24 p.m.)

8 BY MS. GAD:

9 Q -- purchase agreement?

10 A Yes.

11 Q And to the best of your knowledge is this a true and
12 correct copy of the Asset Purchase Agreement as it relates to
13 Thompson's acquisition of Sterling?

14 A Yes.

15 Q And as far as you know is the Asset Purchase Agreement
16 maintained by the company in the ordinary course of business?

17 A Yes.

18 MS. GAD: And, Your Honor, I'd move to introduce
19 Exhibit 1 into evidence.

20 THE COURT: Does anyone have any objections?

21 UNIDENTIFIED SPEAKER: No objection.

22 MR. CRESCENZO: No objection, Your Honor.

23 THE COURT: Without objection Exhibit 1 is admitted
24 for purposes of this injunction hearing.

25 (Plaintiff's Exhibit No. 1 received in evidence.)

1 MR. LOMBARDINO: And, Your Honor, real quick for
2 housekeeping. Should I drop the exhibits into the chat or
3 what's the best way to distribute it among everyone?

4 THE COURT: So everyone doesn't have -- already have
5 a copy of the Asset Purchase Agreement?

6 MR. LOMBARDINO: No, Your Honor --

7 THE COURT: It's a pretty critical document it seems
8 like, but nobody -- okay. I guess the best way to do it is if
9 you have any questions about what's in the document, ask them
10 on cross-examination.

11 And, Ms. Gad, if you can provide a copy of that
12 document to everyone, at your convenience, not now because
13 you're in the middle of examination.

14 MS. GAD: Yes, Your Honor, I'll do that.

15 THE COURT: Okay. And so you may continue.

16 MS. GAD: Thank you.

17 BY MS. GAD:

18 Q And now I'm going to turn your attention to Page 1 of the
19 Asset Purchase Agreement. And specifically Article Q,
20 Purchase and Sale in Paragraph 2.1.

21 What is your understanding of Paragraph 2.1 titled
22 "Assets to be Transferred"?

23 A That includes, or has a listing of all of the assets that
24 we acquired with the purchase of Sterling.

25 Q And turning to Page 3, scrolling down at Paragraph O, and

1 I'll give you a little time to review that, what is your
2 understanding of what Paragraph O says?

3 A Yes, that there's assets, properties, rights that's on a
4 schedule, that's 2.1.

5 Q Okay. So I will --

6 (Pause in the proceedings.)

7 BY MS. GAD:

8 Q So I'm putting up on my screen what has been marked as
9 Exhibit 2, which is titled the "Seller's Disclosure Schedule."

10 Are you familiar with this document?

11 A Yes.

12 Q And to the best of your knowledge is this a true and
13 correct copy of the seller's Disclosure Schedule related to
14 the Asset Purchase Agreement?

15 A Yes.

16 Q And as far as you know is the seller's Disclosure
17 Schedules maintained by the company in the ordinary course of
18 business?

19 A Yes.

20 MS. GAD: And, Your Honor, I move to introduce
21 Exhibit 2, the seller's Disclosure Schedule, into evidence.

22 THE COURT: Any objections to Exhibit 2?

23 MR. CRESCENZO: I'd object (indiscernible) without a
24 copy it's hard to say. It's on the basis (indiscernible)
25 copy prior to today. But other than that, that's my only

1 basis.

2 MS. GAD: I'm sorry, I couldn't really hear.

3 MR. CRESCENZO: It's the first time we're seeing the
4 document.

5 THE COURT: Okay. Well, can you just scroll down to
6 the very -- the signature block, and then -- just hold your
7 spot, but scroll down to the signature block of the document.

8 MR. LOMBARDINO: And just for the Record I did
9 receive an email and there's one too to defense counsel.

10 THE COURT: Okay. Great.

11 MS. GAD: The Disclosure Schedule doesn't have a
12 signature block.

13 THE COURT: Okay. Oh, that's true, it's an
14 attachment. Okay. Never mind. I was going to say if you
15 recognize the signatures, that this was attachment to. But
16 that's okay, I'm just going to let you go.

17 Respectfully the objection's overruled, and,
18 Ms. Gad, you can go back to what you were doing.

19 MS. GAD: Thank you. Thank you, Your Honor.

20 BY MS. GAD:

21 Q And the pages are not numbered, but I'll turn to what is
22 the third page of Exhibit 2, which is the Schedule 2.10 that
23 we were just discussing. Is that correct?

24 A Yes.

25 Q And what is your understanding of this first table here?

1 A That was the acquisition of Sterling First Aid and Fire
2 Safety. We acquired enforceable non-compete and employee
3 agreements filed with that purchase.

4 Q And are Mr. Jackson's and Mr. Jones' non-compete
5 agreements listed on this table?

6 A They are.

7 Q Okay. So based on the transaction documents we just
8 reviewed, the Asset Purchase Agreement and the seller's
9 disclosure, what is your understanding as to what happened
10 with Mr. Jones' and Mr. Jackson's non-compete agreements after
11 the acquisition?

12 A That they were transferred and enforced by Thompson -- at
13 Thompson Safety.

14 MS. GAD: Okay. I'll stop sharing.

15 And, Your Honor, the Sterling employment agreements
16 at issue for Mr. Jones and Mr. Jackson have already been
17 established by Mr. Roesler's Declaration. To save time would
18 you allow us to admit them into evidence formally as
19 Exhibits 3 and 4?

20 THE COURT: Any objections?

21 MR. CRESCENZO: I'm sorry, which exhibits were
22 that -- was that?

23 MS. GAD: They'll be Exhibits 3 and 4, the --
24 respectively, so the employment agreements from Sterling for
25 Mr. Jones and Mr. Jackson.

1 MR. CRESCENZO: Okay. Thanks.

2 No objection. Yeah, no objection.

3 MS. GAD: And similarly, Judge --

4 THE COURT: Without objections they're admitted.

5 MS. GAD: Thank you.

6 THE COURT: Without objections, they're admitted.

7 (Plaintiff's Exhibit Nos. 3 and 4 identified and received
8 in evidence.)

9 MR. LOMBARDINO: And for the Record, I'm emailing
10 Exhibits 3 and 4 right now.

11 MS. GAD: And similarly, Your Honor, the Thompson
12 employment agreements have already been established by
13 Mr. Roesler's Declaration. May we admit those formally as
14 Exhibits 5 and 6?

15 THE COURT: The witness (indiscernible) --

16 MR. CRESCENZO: Okay. No objection.

17 THE COURT: Okay. They are admitted.

18 (Plaintiff's Exhibit Nos. 5 and 6 identified and received
19 in evidence.)

20 MR. LOMBARDINO: Your Honor, for the Record
21 Exhibits 5 and 6 have been emailed (indiscernible).

22 THE COURT: Do you need access, Ms. Gad, or --

23 MS. GAD: No, I'm so sorry, it's -- it's not showing
24 up exactly how to share my screen.

25 Okay. I'm going to try it again. Sorry for the

1 technical difficulties.

2 THE COURT: No, no problem.

3 MS. GAD: Okay.

4 BY MS. GAD:

5 Q So as to Exhibit 3, Mr. Roesler, I'm going to turn your
6 attention to the third page of the agreement, the non-compete.
7 And so it's your understanding is the non-compete provision
8 contained here, that was acquired by Thompson through the
9 acquisition of Sterling.

10 A Correct.

11 Q And similarly with Mr. Jackson.

12 A Correct.

13 Q And so after the acquisition with Sterling what company
14 did Defendants Mr. Jackson and Mr. Jones work for?

15 A For us, Thompson Safety.

16 Q And how did their job change after the transaction?

17 A It didn't, they were -- they maintained fire technician
18 status and continued to service customers.

19 Q And did they continue servicing new customers?

20 A Yeah, so they would also service Thompson Safety
21 customers, legacy Thompson Safety customers as well.

22 Q Okay. And as far as you know, you know, what documents
23 did the Defendants sign when they became employees of
24 Thompson?

25 A They signed our employee agreements as well

1 (indiscernible).

2 Q And as far as you know what is the purpose of those
3 employment agreements with Thompson?

4 A To protect our intellectual property, to protect our
5 customers, you know, protect our business. Right? As well as
6 really like allowing -- if there were any transitions for
7 customers, really like a cool down period for us to continue
8 building and maintaining that relationship.

9 THE COURT: Ms. Gad, can I -- can I just
10 ask Mr. Roesler a quick question?

11 MS. GAD: Yes.

12 THE COURT: Mr. Roesler, in the covenants that we're
13 talking about I notice that the radius was 200 miles. Can you
14 tell me -- or can you understand why the number 200 was come
15 up with? Was there a reason why it's 200 miles, as opposed to
16 50 or 100 or 500? Do you have any knowledge as to why it's
17 200?

18 THE WITNESS: To clarify are you -- you're talking
19 about the Sterling agreement that we acquired?

20 THE COURT: Yes.

21 THE WITNESS: So the idea really behind a radius
22 that large is we've got a lot of customers that have multiple
23 locations, multiple sites outside of Houston. They could be
24 up in Dallas, they could be, you know, in other states as
25 well. And just, again, to protect -- protect our customers

1 and our interests.

2 THE COURT: Thank you, Mr. Roesler.

3 Ms. Gad, you may continue.

4 MS. GAD: Thank you.

5 BY MS. GAD:

6 Q As to Mr. Jones, when did you learn that he would be
7 leaving Thompson?

8 A End of March, or like I think -- I believe it was
9 March 21st.

10 Q Okay. And did he provide any sort of notice period?

11 A He did a provide us 2-week notice.

12 Q Did he withdraw that notice period?

13 A He did not.

14 Q So when was his actually last day of work at Thompson?

15 A I believe it was March 25th.

16 Q And then as to Mr. Jackson when did the company learn
17 that he would be leaving Thompson?

18 A What was that?

19 Q As to Mr. Jackson when did the company learn that he
20 would be leaving Thompson?

21 A It was shortly thereafter. (Indiscernible).

22 Q And so what did you discover after Mr. Jones' last day of
23 employment with Thompson?

24 A So I mean, we ended up finding a fire tag at one of --
25 from his new competing business, that he started his own

1 competing business, and that he had emailed our confidential
2 pricing files from Thompson Safety email to his personal
3 email.

4 Q Okay. And let's go through Mr. Jones line-by-line. You
5 mentioned that you discovery he'd formed his own company.
6 When did you discover that he started his own company?

7 A Almost right after he had left. We had -- we had
8 discovery obviously with that -- with the fire tag that had
9 his license number we were able to see that he is -- every
10 fire technician has a Texas Fire Marshal Class B fire license
11 and every company that does fire work has an ECR number, which
12 is it's basically like your fire license for the company. And
13 his license, his personal license was transferred to another
14 ECR number which we ended up discovering was his business,
15 Jones Fire and Safety.

16 Q And how did you learn that that was his business?

17 A Because we found the fire tag that had Jones on there,
18 and then obviously we did a little bit more digging and then
19 we found on the Secretary of State's website that he had
20 created a new business in January.

21 Q Okay. And then you mentioned -- you mentioned the
22 inspection tag that you discovered in March.

23 A Yes.

24 Q I'm going to share my screen again, I'm going to try.

25 (Pause in the proceedings.)

1 BY MS. GAD:

2 Q Okay. I'm bringing up my screen on what has been marked
3 as Exhibit 8.

4 It doesn't scroll down, but can you tell me what this
5 document is?

6 A Yes, so these are pictures of fire extinguishers at
7 customer sites that we were attempting to go service on our
8 regular scheduled frequency and come to find out that they
9 were serviced by Jones Fire Protection before we were able to
10 complete the work.

11 Q Okay. Please --

12 (Glitch in audio from 4:27:43 p.m. to 4:27:52 p.m.)

13 THE WITNESS: -- our North Houston location.

14 BY MS. GAD:

15 Q And as far as you know, the picture is an accurate
16 reflection of what was being photographed through the fire
17 technician's --

18 A Yes, yes.

19 Q -- tag?

20 A Yes, so Andrew was able to pull the data, on the
21 left-hand side is meta data and I'm not going to pretend to
22 know all the nuances of that, but basically it's the
23 encryption of the picture so it proves where that picture was
24 taken because obviously you can't tell with the fire tag of
25 where that picture was taken, so this is the proof of where

1 that was taken.

2 MS. GAD: And, Your Honor, so I move to admit what
3 has been labeled as Exhibit 8 into evidence.

4 MR. CRESCENZO: No objection.

5 UNIDENTIFIED SPEAKER: No objection, Your Honor.

6 THE COURT: Okay. Without objection the exhibit is
7 admitted.

8 (Plaintiff's Exhibit No. 8 received in evidence.)

9 MR. LOMBARDINO: And for the Record I just emailed
10 defense counsel Exhibit 8.

11 THE COURT: Thanks, Mr. Lombardino.

12 BY MS. GAD:

13 Q And so for this first inspection tag can you explain the
14 information contained on the tag and explain the significance
15 of the date?

16 A Yeah, so if you notice the hole punch is on the right
17 hand side, it proves that there was maintenance done on the
18 extinguisher and that it was tagged March of 2024. So that
19 means the service was completed in March of 2024, strongly
20 indicating that this was probably tagged while he was still
21 employed at Thompson Safety.

22 Q Okay. And so after finding this initial inspection tag
23 in March, what steps did the company take to address the
24 issue?

25 A So we -- obviously when we found out that he had done

1 this, we were -- we were attempting to get in front of our
2 customers to see if we could make sure that he wouldn't be
3 able to steal any more customers.

4 Q Did you address the Defendants in any way about --

5 A Yeah --

6 Q -- about the issue of the different --

7 A -- we did, we sent a cease and desist almost immediately
8 after discovering this tag.

9 Q And what happened during the course of that cease and
10 desist, did you get a response?

11 A Our attorneys spoke to his attorneys, yes.

12 Q And do you know what resolution the parties came to after
13 that call?

14 A Yeah, so our management team at Thompson basically took
15 like a wait and see approach, and so hoped that with that
16 cease and desist letter that it wouldn't continue to make sure
17 that we weren't having any more customers stolen from us, so
18 we took a wait and see approach.

19 Q Okay. So even after that cease and desist and the
20 communication with counsel, what did you continue to find?

21 A More fire tags at customers that we were going to service
22 that had already been completed.

23 Q And what months were those for?

24 A April, May and even into June.

25 Q And to be -- how many customers are you aware of that

1 Thompson has lost to Jones Fire?

2 A At least 20.

3 Q And similarly with this March 2024 inspection tag, how
4 did Thompson discover that these customers were seen by Jones
5 Fire?

6 A Because when our technicians would make our regularly
7 scheduled visits to go see these customers, they had already
8 been completed.

9 Q And then you mentioned that you discovered he emailed
10 himself a pricing list.

11 (Pause in the proceedings.)

12 THE COURT: Do you need access, Ms. Gad, or --

13 MS. GAD: I have it. Sorry, it's just --

14 THE COURT: Okay.

15 MS. GAD: -- it's a little slow to pull up.

16 THE COURT: No problem.

17 BY MS. GAD:

18 Q Okay. So I'm bringing up my screen at what has been
19 marked Exhibit 7.

20 Do you recognize this document?

21 A I do.

22 Q And what is it?

23 A this is the email that Jace sent from his Thompson Safety
24 email address to his personal email address with our
25 confidential pricing information and pricing file.

1 Q Okay. And is this a true and correct copy of that email
2 and Thompson's pricing list?

3 A Yes.

4 Q And was this document maintained in the ordinary course
5 of business?

6 A Yes.

7 MS. GAD: And, Your Honor, I move to admit what has
8 been marked as Exhibit 7 into evidence.

9 MR. CRESCENZO: Your Honor --

10 THE COURT: Any objections?

11 MR. CRESCENZO: -- yes, Your Honor, I object. This
12 is Joe Crescenzo for Defendant Jace Jones. I believe that the
13 confidential marking on that document is not on the document
14 that was previously provided to Mr. Jones. I believe it has
15 been added for the purposes of this lawsuit after the fact.

16 THE COURT: Okay.

17 MR. CRESCENZO: I would object to it being a true
18 and correct copy.

19 THE COURT: Okay. Well, I'm going to overrule the
20 objection, allow the document admitted, and then on cross-
21 examination or on direct you can take up the issue, either
22 with Mr. Roesler or with -- when your client takes the stand.
23 But for now the objection is overruled and the document is
24 admitted.

25 (Plaintiff's Exhibit No. 7 received in evidence.)

1 THE COURT: And the other thing is, well, whether
2 it's marked confidential or not, that document, if it was
3 recieved, has all the hallmarks that the 5th Circuit said that
4 indicates that the document would be confidential. It's not
5 just names, I mean, it's pricing information, specific items,
6 this is -- even if it wasn't marked confidential, it would be
7 confidential. So, but you guys can take it up on cross-
8 examination.

9 MR. CRESCENZO: Thank you.

10 I intend to take it up on cross. Thank you.

11 MR. LOMBARDINO: And I can clear that -- just clear
12 it up so there's no misunderstanding, and if you still want to
13 take it up on cross, you can. But it was marked confidential
14 today for purposes of the protective order. So we're not
15 contending that it was -- had been stamped confidential before
16 the hearing. That's really the -- but they can say what they
17 want to.

18 THE COURT: Okay.

19 MR. CRESCENZO: Well, right, and that was the
20 objection, Your Honor. I wasn't objecting that it couldn't be
21 confidential information otherwise. I just wanted to clarify
22 what Mr. Lombardino said, and that's --

23 THE COURT: Okay.

24 MR. CRESCENZO: -- that's sufficient for me. Thank
25 you.

1 THE COURT: Sounds great.

2 Okay. Ms. Gad, you're still on.

3 MR. LOMBARDINO: Oh, one more just for the Record, I
4 emailed Exhibit 7 to defense counsel.

5 THE COURT: Okay. Thank you, Mr. Lombardino.

6 BY MS. GAD:

7 Q And, Dave, when did you discover that Mr. Jones emailed
8 himself this pricing list?

9 A Right after he was -- basically after he was terminated
10 when we started doing digging where we found tags and wanted
11 to kind of understand, okay, if he started his own business,
12 what else, you know, what else was there. Right?

13 Q And is there any business reason why a fire technician
14 like Mr. Jones would need to email himself a pricing list to
15 his personal email account?

16 A I mean, nothing that I can think of, unless you wanted to
17 start your own company and, you know, undercut your previous
18 employer by a couple of bucks to gain business.

19 Q And that gets to my next question, which is like how
20 would, you know, the unauthorized use or disclosure of this
21 pricing list harm Thompson?

22 A I mean, significantly. Right? I mean, if -- it allows
23 them to break trust with our customers and be able to have
24 conversations about, you know, anything really related to our
25 pricing. I mean, that's confidential information.

1 Q And how much time and money was spend developing this
2 pricing list?

3 A You know, quite a bit, but it's ongoing, too. Right?
4 We, you know, we spend a lot of time with our pricing on an
5 annual basis making sure that we're competitive in the market,
6 making sure that we're doing our best by our customers. And
7 so our executive leadership team meets, and I mean, you saw
8 the line items there, we're going through those individually
9 making sure we're looking at our costs and understanding what
10 our margins are, so quite a bit.

11 Q And so you mentioned that inspection tags were found at
12 Thompson customer sites. To the best of your knowledge how
13 would Defendants know to service these customers for their
14 annual inspections?

15 A So customers are on a scheduled frequency, so unless
16 they've got -- you know, they can memorize dates and customers
17 and all that kind of stuff. We have a -- that we acquired
18 with Sterling, route cards, and so these route cards had a ton
19 of information on them and basically allows -- gives you when
20 the customer is due and all sorts of other information.

21 Q And I am bringing up on my screen what has been marked as
22 Exhibit 9.

23 Do you recognize this document?

24 A I do.

25 Q And is this a copy of a customer route card that you were

1 just referring to?

2 A It is -- that is correct. This is the first account that
3 we I think realized we lost.

4 Q And is this a true and correct copy of an example of a
5 customer route card?

6 A Yes.

7 Q And is this maintained in the ordinary course of
8 business?

9 A Yes.

10 MS. GAD: And so, Your Honor, I would move to admit
11 Exhibit 9 into evidence.

12 MR. CRESCENZO: No objection.

13 UNIDENTIFIED SPEAKER: No objection, Your Honor.

14 THE COURT: Without objection the exhibit is
15 admitted.

16 (Plaintiff's Exhibit No. 9 received in evidence.)

17 BY MS. GAD:

18 Q And so, Mr. Roesler, can you -- can you walk us --

19 MR. LOMBARDINO: I've emailed Exhibit 9 to defense
20 counsel.

21 MS. GAD: Thank you.

22 MR. LOMBARDINO: Sorry. Sorry, Ms. Gad.

23 BY MS. GAD:

24 Q Can you walk us through the information contained in this
25 customer route card?

1 A Yeah, so it has the customer name obviously, bill to
2 address of where that customer is billed, and contact names
3 and numbers, it obviously shows first invoice dates, what was
4 on the initial order, this one particularly shows the number
5 of fire extinguishers that that customer has, special
6 instructions, so this has pricing so what the annual cost is,
7 service charges, all that good stuff.

8 And then it has most importantly the schedule on the
9 bottom so you know when to service that customer. So if you
10 look at the left-hand side, it shows March obviously dating
11 back to 2015. These customers -- this customer is serviced in
12 March.

13 Q Thank you.

14 And so walk us through kind of up to present day. Have
15 you received any report of Defendant's activity even after the
16 TRO was entered in this case?

17 A Yes. So we had a customer reach out to us after the TRO
18 was in place that basically said, you know, that Jace had
19 called them, gave them a sob story of how, you know, Thompson
20 Safety is suing him to try to gain that business. Also
21 mentioned that we used unlicensed fire technicians to service
22 fire extinguishers, and, you know, tried to -- tried to run
23 that business even after the TRO was in place.

24 Q And so with the discovery of, you know, the inspection
25 tags and getting information from this client about they're

1 post-TRO activity, how has Thompson been harmed by Defendant's
2 actions?

3 A I mean, I would say a couple of different things. Right?
4 Our reputation, if you have somebody -- you know, your
5 competitor running around telling you that -- you know, lies
6 about our service technicians doing -- our fire service
7 technicians doing work without licensing, obviously our
8 competitors having our pricing and confidential information,
9 and most importantly our customer relationships. Right? I
10 mean, we have -- we now have customers that may never do
11 business with us again based either on a lie or understanding
12 of pricing and they may never come back.

13 Q Thank you, Mr. Roesler.

14 MS. GAD: Your Honor, I pass the witness.

15 THE COURT: Okay. Counsel, before we have cross-
16 examination.

17 (Pause in the proceedings from 4:41:15 p.m. to
18 4:43:15 p.m. as Judge attends another case.)

19 THE COURT: Okay. Counsel for the Defendants, each
20 of you may cross Mr. Roesler at this time. Just tell me who's
21 going to start so I can keep a clean Record.

22 MR. CRESCENZO: Thank you, Judge.

23 This is, again, Joe Crescenzo for Defendant Jace
24 Jones. I'll begin the cross-examination.

25 THE COURT: Okay. You may -- oh, Counsel, you need

1 to speak up because the ERO can barely hear you. So either
2 you need to move the microphone closer to you or speak up so
3 we can keep the Record.

4 MR. CRESCENZO: I apologize. Is this better? Can
5 you hear me better?

6 THE COURT: Yes. Perfect.

7 MR. CRESCENZO: Okay. I was speaking too softly.

8 CROSS-EXAMINATION

9 BY MR. CRESCENZO:

10 Q So, Mr. Roesler, it's my understanding that in this case
11 one of the bits of confidential information that you believe
12 that Thompson has is the fact that you -- that Thompson
13 services certain businesses for their fire extinguisher needs.
14 Is that correct?

15 A Can you repeat that?

16 Q Yes, sir, I apologize.

17 You've indicated that the identity of Thompson's
18 customers is a -- is confidential information that you are
19 seeking to keep confidential. Is that correct?

20 A The identity of our customers?

21 Q Yes, sir. It's my understand that's one of the bits of
22 confidential information that --

23 A I would say -- are you referring to like -- like the
24 customers themselves?

25 A Yes, yes, sir, because I mean, you've -- you've alleged

1 that the Defendants have taken the confidential information
2 which includes the identity of their customer -- of your -- of
3 Thompson's customers so they know who to go service. So my
4 understanding is --

5 THE COURT: Let me just cut to the -- let me -- let
6 me just cut to the chase, my understanding is that's not what
7 the pleadings say. The pleadings -- it's not just the
8 customers, it's the customers and the information relating to
9 those customers. So it's not -- the name of the customer is
10 not what Mr. Roesler is contending about.

11 Because I've read this, the motion, it's not the
12 names, it not the identity alone, it's the identity plus the
13 information regarding Mr. Roesler's company's servicing of
14 those customers. So I mean, I'm just trying to move it along.
15 I get what your argument or your question is, but that's not
16 what he said and it's not what's in the pleadings.

17 The pleadings say --

18 MR. CRESCENZO: Okay.

19 THE COURT: -- it's not the identity alone, it's
20 the identity plus the information related those individuals --

21 MR. CRESCENZO: I understand this, Your Honor.

22 THE COURT: -- (indiscernible).

23 MR. CRESCENZO: I completely understand that, Your
24 Honor, and I was simply -- given the time of day, I will
25 endeavor to speed things up, I was simply trying to walk him

1 through his testimony. He told --

2 THE COURT: No, no problem. No problem. You go as
3 long as you need.

4 MR. CRESCENZO: Thank you, Judge.

5 BY MR. CRESCENZO:

6 Q The point that I was trying to make is we were shown an
7 exhibit of a fire tag on a fire extinguisher that is one way
8 in which Thompson discovered that Jones Fire had serviced
9 particular customers, and that from looking at the photo it
10 looked like there was additional information on that tag as
11 well, which included when the customer was last serviced.

12 And so my question would be, if Thompson was able to
13 find that information by simply walking into their -- who they
14 believe their customers were, how that information could be
15 considered confidential, and so my question is, how -- why
16 would you believe that that information is confidential?

17 A It would be amazing if you can walk into a customer at
18 any given point and find a customer tag. These are customers
19 that we had scheduled frequencies that we were meant to go to
20 service, and they were already done first hand.

21 Q But couldn't you walk into -- well, first of all, don't
22 most businesses and buildings, aren't they required by law to
23 have fire extinguishers in various areas of the building, in
24 public areas?

25 A Yes.

1 Q Well, then what would prevent anyone from doing this
2 business, from walking in and discovering that particular type
3 of information?

4 A What would prevent them?

5 Q Correct.

6 A I guess nothing but I think the biggest point there is
7 we're talking about 20 customers that we serviced that when we
8 showed up to service were already completed by Jones Fire
9 Protection.

10 Q Did you have contracts with those customers?

11 A We acquired those customers with the acquisition of
12 Sterling.

13 Q Okay. Did -- so as part of the Asset Purchase Agreement,
14 I haven't had a chance to read it, but is it your contention
15 that there were customers with contracts that were included as
16 part of that agreement?

17 A So I would say that --

18 MR. LOMBARDINO: Objection; calls for legal
19 conclusion.

20 THE COURT: I'm sorry, I couldn't --

21 MR. LOMBARDINO: Sorry. I said, objection, it calls
22 for a legal conclusion.

23 MR. CRESCENZO: I believe he's already testified
24 that there were contracts that came with the Asset Purchase
25 Agreement.

1 THE COURT: Yeah, I'm going to overrule the
2 objection. I think Mr. Roesler can answer the question. It
3 doesn't really call for a legal conclusion, but he's not being
4 asked about the legal effect of the contracts, he's just
5 asking what his understanding of what he got out of the
6 acquisition.

7 So, objection is overruled, Mr. Roesler can answer
8 the question.

9 THE WITNESS: So it's my understanding that we, when
10 we acquired these customers there may or may not have been
11 contracts in place.

12 BY MR. CRESCENZO:

13 Q Okay. So as we sit here today you cannot testify one way
14 or the other whether or not the Asset Purchase Agreement
15 included contracts for Sterling customers?

16 A We acquired customers with Sterling on scheduled
17 frequencies, and -- but whether or not they had contracts --

18 Q Thank you.

19 So the customers -- to your knowledge the customers were
20 free to leave at any time if they were unhappy with Thompson
21 services?

22 A Yeah.

23 Q Did any of those customers -- were they required to your
24 knowledge to sign a non-disclosure agreement with respect to
25 pricing? And I will clarify, when I mean, pricing, that the

1 pricing that they were getting charging by Thompson or
2 Sterling?

3 A So you're talking about our confidential pricing?

4 Q Yes.

5 A And the question is, one more time?

6 Q The question is were they required to sign any documents
7 that prevented them from disclosing that information to third
8 parties?

9 A No.

10 Q So I understand that one part of Thompson's business is
11 the fire extinguisher business. That's correct?

12 A Yes.

13 Q And then looking at your affidavit in support of the
14 injunction, you had also listed first aid, safety supplies,
15 and personal protective equipment, automated external
16 defibrillators, eye wash, fire extinguishers, other protective
17 fire protection services, training services and overall
18 management of their safety programs.

19 My question is given the -- what percentage, and I know
20 you won't have a precise amount, but what would you estimate
21 is the amount of work that Mr. Jones and Mr. Jackson did
22 relative to the whole scope of Thompson's business interests?

23 A What percent?

24 Q Yeah, because it's -- I know Thompson seems to provide
25 more services than what the Defendants provided. So I was

1 curious as to how much of Thompson's business was generated by
2 the jobs performed by the Defendants.

3 A So we have -- we have 12 routes that are north of Houston
4 so whatever 2 out of 12 is. Maybe we had 13 at the time, I'd
5 have to go back and check, but North Houston had 13 reps --
6 routes, and they were 2 of them.

7 Q Okay. And is that simply for the fire extinguisher
8 services that you're talking about?

9 A No, for the fire extinguishers they worked 50 percent.

10 Q Okay.

11 A Because we had 2 other service reps -- 2 other fire
12 technicians.

13 Q Okay. Okay. Now you had mentioned, going back to the
14 Sterling agreement for a second, that the reasoning for the
15 200-mile radius for -- of non-competition was based on
16 protection of goodwill and things of that nature. That's
17 correct, just so I'm restating your testimony accurately?

18 A I recall the 200 miles is for the -- if we have a
19 customer that's, you know, in Conroe, Texas, and has other
20 locations outside of that, you know, there's a potential to
21 lose that business as well.

22 Q Okay. So that's your understanding of the Sterling
23 agreement. But did you -- do you have personal knowledge of
24 -- were you personally involved in writing the Sterling
25 agreement?

1 A I was not.

2 Q Thank you.

3 So I understand you may have your reasons for trying to
4 enforce that, but you don't know specifically why Sterling had
5 that specific range in their agreement?

6 A (No audible response.)

7 Q Did Thompson provide the Defendants with a phone?

8 A No, we provided a cell phone stipend.

9 Q Okay. Did you provide them with a personal computer?

10 A I do not believe -- there was one at the -- there was a
11 couple of computers like at the location, but, no.

12 Q Okay. Did they manage anybody, meaning did they have
13 anybody under them?

14 A Besides the management of the customers?

15 Q Yes, besides that.

16 A No.

17 Q Did all of the employees at Thompson, were they required
18 to sign a confidentiality agreement?

19 A An employee agreement, yes.

20 Q And to your knowledge is the -- is the scope of that non-
21 competition agreement the same?

22 A To my knowledge.

23 Q Is it your testimony that if you're providing the same
24 amount of confidential information to everybody in the company
25 that it's really confidential information?

1 A I don't understand the question.

2 Q So, okay, let me -- let me back up.

3 Did you provide -- are all of the employees of Thompson
4 provided with the same confidential information as the others?

5 A Repeat that one more time.

6 Q I'm sorry.

7 A Yeah.

8 Q Were Mr. Jones and Mr. Jackson provided with confidential
9 information that differs from the information that may have
10 been provided to other employees who signed the same employee
11 agreement? To your knowledge.

12 MS. GAD: Your Honor, I object to the relevance of
13 that question. We're only here looking at Mr. Jones' and
14 Mr. Jackson's employment agreements.

15 MR. CRESCENZO: Your Honor --

16 THE COURT: The objection's overruled. The
17 objection's overruled. I don't need to hear argument.

18 I get your argument is, if it's confidential -- if
19 it's confidential information, shouldn't it be confidential to
20 everyone, not specific people if it's truly confidential.
21 That's what you're trying to get at. So I just need to get an
22 answer.

23 THE WITNESS: So, yeah, so if that's the question,
24 then, yes, everybody has the same confidentiality agreement.
25 BY MR. CRESCENZO:

1 Q Okay. And everyone was provided with the same
2 confidential information?

3 THE COURT: Well, that doesn't make sense --

4 THE WITNESS: No.

5 THE COURT: -- because, yeah, that -- yeah, okay,
6 never mind. The answer's clearly no because people have
7 different information based on where they worked in the firm.
8 I mean --

9 THE WITNESS: Yeah.

10 THE COURT: -- but --

11 BY MR. CRESCENZO:

12 Q Okay. So looking at the confidential information that
13 was listed in Paragraph 16 of your affidavit, Mr. Roesler, you
14 indicated that the Defendants were provided with information
15 about Thompson's business and business model. Correct?

16 A I don't recall that specific paragraph or, you know --

17 Q Okay. Well, would you agree with that statement, that
18 they were provided with information about the business model
19 of Thompson?

20 A Yes.

21 Q Okay. And supplier and pricing information, you would
22 agree that they were provided with that information as well?

23 A Yeah.

24 Q And customer information including customer preferences,
25 order history, pricing and margin information?

1 A Yes.

2 Q Can you point to a business purpose why the technicians
3 would need information on margins?

4 A The question is why do they need information on margins?

5 Q Yes, sir.

6 A To have margin integrity so we're selling things above
7 cost to --

8 Q Did they have any control over the pricing?

9 A Yes.

10 Q Okay. So they had discretion on setting the pricing for
11 specific customers.

12 A Because of the acquisition of Sterling there were
13 differences.

14 Q What kind of differences?

15 A Because we acquired those customers.

16 Q Okay. So the differences in pricing? I'm sorry --

17 A Yeah --

18 Q -- I'm just trying to clarify. You said that they were
19 differences, and they were based on the fact that you acquired
20 the Sterling customers. And the pricing -- I'm thinking the
21 difference that you're talking about is the difference in the
22 pricing between Sterling and the Thompson customers. Is
23 that -- is that a fair statement?

24 A Yeah.

25 Q Okay. Were the Defendants responsible for acquiring new

1 customers?

2 A No, they were not.

3 Q Okay. My understanding is there's an account rep team
4 that was responsible for that?

5 A Yes, we have an outside sales team.

6 Q Is there any special way that Thompson requires its
7 technicians to service fire extinguishers?

8 A Ask that again, please?

9 Q Is there any special way that Thompson requires its
10 technicians to service fire extinguishers?

11 A We, I mean, we do things sometimes a little bit different
12 than our competition.

13 Q Okay. So the answer -- then your answer is yes.

14 A Yeah.

15 Q And I'm assuming that you're referring to pricing. As
16 far as the technical aspect of servicing the extinguishers is
17 there anything special about what Thompson requires the
18 technicians to do?

19 A A little bit, yeah. So we do an even exchange program
20 which is -- which is like an even exchange opt-out of
21 extinguishers versus like doing them in the field. So we have
22 some special ways to go about doing that, yes.

23 Q Okay. Do you believe that Jones and his business does
24 the even exchange that you just described?

25 A I'm not sure.

1 Q I don't have too much more, Mr. Roesler.

2 So regarding the pricing list that Mr. Jones emailed to
3 himself, you don't have any knowledge that he used any of that
4 pricing at Jones Fire, do you?

5 A I understand -- I actually haven't.

6 Q Do you require your technicians to know Thompson's
7 pricing?

8 A Yeah, they know it when they're servicing customers.

9 Q Had pricing -- had pricing recently changed since this
10 was in January of 2024?

11 A Yes.

12 Q Is there anything -- was Mr. Jones ever instructed not to
13 email himself the pricing list?

14 A Personal email?

15 Q Correct.

16 A Yeah, it's inappropriate.

17 Q Would it be inappropriate if he did not misuse it and
18 just printed it out to use it for help servicing Thompson's
19 customers?

20 A Yeah, I think it's inappropriate.

21 Q Okay. But -- okay.

22 MR. CRESCENZO: Thank you Mr. Roseler.

23 I'll pass the witness at this time.

24 THE COURT: Next defendant? Counsel, for the next
25 defendant. You may proceed when ready.

1 (Court attends an unrelated matter from 5:04 p.m. to

2 THE COURT: Okay, I think we've got everyone taken
3 care of. Okay. You may proceed with your examination of the
4 witness.

5 MR. WINKELMAN: Sure. Lee Winkleman, counsel for
6 Justin Jackson.

7 CROSS-EXAMINATION

8 BY MR. WINKELMAN:

9 Q Mr. Roesler, did I say that last name correctly? I want
10 to make sure I got it right. I don't want to butcher it.
11 Roesler.

12 A It's Roesler.

13 Q Wrestler, like wrestling.

14 A Lone Star Wrestler.

15 Q Even better. Excellent.

16 Does Thompson have any specific policies concerning the
17 use of its computer systems?

18 A Yes.

19 Q Okay. And -- but those aren't in evidence in this TI
20 hearing, are they?

21 A (No audible response.)

22 Q Have any of those policies been submitting into evidence
23 such as temporary injunction hearing?

24 A Not that I'm aware of.

25 Q Okay. And where are these policies, where do they live?

1 A In Sharepoint.

2 Q Okay, what's Sharepoint?

3 A It's our internal password protected like document
4 storage, if you will.

5 Q And so is does it contain like an employee handbook, the
6 policies?

7 A I believe so.

8 Q Do you require employees to sign off on acknowledgment
9 that they've read it and understand it?

10 A We have employee agreements that are required to be
11 signed off.

12 MR. WINKELMAN: Objection, non-responsive.

13 BY MR. WINKELMAN:

14 Q Do you require the employees to sign off on an
15 acknowledgment saying that they've read the policies related
16 to the computer system?

17 A I'm not sure what it exactly says that they sign off on.

18 Q Okay. Regardless, we -- there have been no
19 acknowledgments signed by either Defendants in this case in
20 evidence, correct?

21 A Apart from their employee agreement?

22 Q Correct. There's been no acknowledgment that they've
23 read and signed any policies related to the company's computer
24 system or read and understood?

25 A Not that I'm aware of.

1 Q Okay. Is it your understanding that the Thompson
2 non-compete that it would prevent Jones Fire for doing
3 business with Thompson customers regardless of who solicited?

4 Let me know if you need me to clarify that.

5 A Yeah, for sure.

6 Q Okay. So does -- to your knowledge based on your reading
7 of it, does it prevent Jones Fire from doing business with
8 customers that solicited them for business?

9 A I would have to go back and read it.

10 Q Okay. Wouldn't you agree that if it does, if it does
11 prevent them from doing work if customers who solicit them
12 that it would be unreasonable?

13 A No, I don't necessarily think that's the case. They are
14 Thompson's customers.

15 Q Okay, but if the customer no longer wants to do business
16 with Thompson, and they would prefer to work with Jace or
17 Justin why prevent the customer from working with them?

18 A Is that because of our -- because they know our pricing.
19 Because they -- what would be the reason there.

20 MR. WINKELMAN: Objection, non-responsive.

21 BY MR. WINKELMAN:

22 Q I'll ask the question real simply. If a customer no
23 longer wants to work with Thompson and would prefer to work
24 with Jace Jones, why prevent the customer -- what interest
25 does Thompson have in preventing the customer from working

1 with them?

2 A Because we could still potentially save that customer.

3 Q You could -- right. You could potentially save the
4 customer, but the customer has lost their goodwill with
5 Thompson, correct? If they don't want to do business --

6 A In the scenario -- in this fabricated scenario? Sure.

7 Q Okay. It wouldn't be necessary to protect the goodwill
8 of the customer at that point.

9 A No, we're protecting the interest of our customers.

10 Q So would -- my question is pretty straightforward. Is it
11 necessary to protect the goodwill between Thompson and its
12 customers to prevent customers who no longer want to do
13 business with Thompson, to do business with Jace Jones?

14 A It's a pretty loaded question if I'm being honest.

15 Q Can you answer it?

16 THE COURT: Yeah, it doesn't make sense. I mean,
17 your question presumes that there's -- that -- I'm going to
18 let you guys take it. But I'm going to object. The objection
19 is the question assumes facts not in evidence. And is vague.

20 So if you can answer it, more power to you. I
21 couldn't answer it because it assumes facts that had not been
22 established yet. One of the factors it assumes that the
23 customers want to leave based on nothing other than the fact
24 that they want another provider. That's never been
25 established.

1 MR. WINKELMAN: Right, I'm asking it as a
2 hypothetical.

3 THE COURT: You guys -- but you guys continue. It's
4 okay. I'm just pointing out that -- I know you didn't object
5 Ms. Gad, but I'm objecting because I'm trying to figure out
6 the facts that I need to make the call with respect to whether
7 or not to issue an injunction.

8 None of -- that question doesn't help me get --
9 doesn't get me there.

10 MS. GAD: I understand. It was presented as a
11 hypothetical so it confused me.

12 MR. WINKELMAN: It was a hypothetical. It's a
13 hypothetical situation, Your Honor. I'm sorry if I wasn't
14 clear enough on that.

15 THE COURT: Okay.

16 MR. WINKELMAN: Okay, well I'm not going to belabor
17 that point any more. I'll pass the witness.

18 THE COURT: Okay. If you could just speak up a
19 little bit, counsel. Everyone, it's still hard for me to hear
20 over here.

21 Okay, Ms. Gad, Redirect?

22 MS. GAD: Yes, thank you.

23 REDIRECT EXAMINATION

24 BY MS. GAD:

25 Q Dave, does Thompson consider its customers' identities

1 and it's customer pricing confidential?

2 A Yes.

3 Q And how could you do business with a customer if you
4 couldn't share your pricing with them?

5 A Well, you couldn't. They wouldn't know what they're
6 paying for the services that we provide.

7 Q And are you aware of any customer of Thompson that has
8 disclosed your pricing?

9 A No.

10 MS. GAD: And let's see. Hold on for one second.

11 I think that's all I have, Your Honor.

12 THE COURT: Defense counsel, you may ask any other
13 questions.

14 MR. CRESCENZO: I have no further questions, Judge.

15 MR. WINKELMAN: I have no further questions, Your
16 Honor.

17 THE COURT: Great, well, Mr. Roesler, I think let me
18 just back and ask you a quick question. I think the
19 hypothetical that they were trying to ask you -- the defense
20 counsel was trying to ask you is if customers wanted to leave
21 on their volition, that is they just wanted to go to someone
22 else and nothing had been done to influence them that was
23 unlawful, would you be okay with those customers leaving your
24 company and going with someone else?

25 THE WITNESS: Yeah. We'd have to be. But I think

1 there's a lot of -- I think there's a lot of gray area in that
2 question.

3 THE COURT: Right, okay. I agree with you. I just
4 wanted to get -- that's what they were trying to ask you.

5 MR. WINKELMAN: You got it right, Your Honor.

6 (Witness steps down.)

7 THE COURT: Okay, great. Okay, then Ms. Gad, you
8 may call your next witness.

9 MR. LOMBARDINO: And I'm actually handle this one.
10 I think we're going to call Mr. Jace Jones, unless he intends
11 (indiscernible) we can just go ahead and call him now after
12 questions and they can ask questions.

13 THE COURT: Okay. Well, here's the deal with the
14 witnesses. When it's been -- when the witness is called, you
15 take the witness and get whatever questions. And then defense
16 counsel you put on your case-in-chief through the witness once
17 they're called.

18 We're not going to have the witness called for
19 direct on one side and then later called for the other side.
20 So once the witness is called, everybody is going to take the
21 witness for all purposes.

22 MR. WINKELMAN: That makes sense.

23 THE COURT: Okay, so Mr. Lombardino, you can call
24 your witness and we can get going.

25 MR. LOMBARDINO: Okay. Plaintiff calls Mr. Jones to

1 the stand.

2 (Pause in the proceeding.)

3 THE COURT: If you could, Mr. Jones, raise your
4 right hand.

5 (Witness sworn.)

6 THE COURT: Okay, you may place your hand down.

7 And Mr. Lombardino, you may proceed.

8 MR. LOMBARDINO: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. LOMBARDINO:

11 Q Mr. Jones, do you admit signing the employment agreement
12 with Sterling?

13 A Yes.

14 Q And you admit signing an employment agreement with
15 Thompson Safety?

16 A Yes.

17 Q And your last day with Thompson Safety was March 28th,
18 2024?

19 A Repeat that?

20 Q Was the last day that you worked for Thompson Safety
21 March 28th, 2024?

22 A No, sir. It was March 27th.

23 Q It's my understanding you gave notice on March 25th.

24 A No, no, no. I gave notice --

25 MR. CRESCENZO: Let him finish the question for you

1 before you answer.

2 BY MR. LOMBARDINO:

3 Q On March -- to the best of your recollection your last
4 working with Thompson Safety was March 25th, 2024?

5 A Correct.

6 Q And you started your new company Jones Fire before you
7 resigned from Thompson Safety?

8 A Correct.

9 Q You started Jones Fire, three months before you resigned
10 from Thompson Safety, right?

11 A Yes, sir.

12 Q Why did you resign from Thompson Safety then?

13 A Well, I still had bills to pay, I still needed a job. It
14 was just a thought.

15 Q So you wanted to keep receiving a pay check from Thompson
16 Safety while you set up in your competing business?

17 A Yes.

18 Q When you started Jones Fire, you knew it was going to be
19 a competitor of Thompson Safety?

20 A Yes.

21 Q And that was the point, right? That was the point of
22 starting the business?

23 A No.

24 Q The point was not to be a competitor of Thompson Safety?

25 A No.

1 Q Do you consider Jones Fire to be a competitor of Thompson
2 Safety?

3 A Yes.

4 Q What is the name of the first customer you serviced for
5 Jones Fire -- and of course this is confidential with respect
6 to (indiscernible).

7 A Homewood Suites.

8 Q And was that before or after you resigned from Thompson
9 Safety?

10 A Afterwards.

11 Q Was Homewood Suites a customer that you serviced while at
12 Thompson Safety?

13 A No.

14 Q Okay. Do you deny servicing Thompson Safety customers on
15 behalf of Jones Fire?

16 A No.

17 Q Do you deny servicing Sterling customers on behalf of
18 Jones Fire or the customers that were Sterling customers that
19 became Thompson Safety customers?

20 A No.

21 Q What is the name of the first Thompson Safety customer
22 that you serviced for Jones Fire?

23 A I honestly couldn't recall.

24 Q Did you start servicing customers for Thompson Safety --
25 withdraw the question.

1 Did you start servicing customers for Jones Fire before
2 you resigned from Thompson Safety?

3 A No.

4 Q How many Thompson Safety customers have you serviced on
5 behalf of Jones Fire?

6 A Approximately less than five.

7 Q And how many Sterling customers have you serviced on
8 behalf of Jones Fire?

9 A About 100.

10 Q And are any of those 105 customers, customers you
11 serviced while you were Thompson Safety?

12 A No.

13 Q Are any of those -- so none of the customers that you
14 serviced -- is it your testimony that you were not -- you've
15 not serviced any customer who was a customer of Thompson
16 Safety?

17 A I'm sorry, repeat that.

18 Q Is it your testimony that Jones, you or your company
19 Jones Fire, have not serviced any customers who were Thompson
20 Safety customers?

21 A I have serviced customers that used to be Thompson Safety
22 customers.

23 Q Is that 105 of them you said?

24 A Just a rough estimate.

25 Q Okay, so of those 105 customers, were those customers

1 that were Thompson Safety customers before you serviced them?

2 A Less than five of them were Thompson customers. The rest
3 have never been billed under Thompson.

4 Q Okay, but they were Sterling customers?

5 A Correct. (Indiscernible).

6 Q Okay. So I'm not -- are any of the customers that you or
7 Jones Fire have serviced, were any of those customers that you
8 serviced were Sterling or for Thompson Safety?

9 A I don't understand your question.

10 Q You had a relationship with some of these customers that
11 you -- that you established or billed while at Sterling and/or
12 Thompson Safety, right?

13 A Correct. They were (indiscernible) for Sterling.

14 Q Do you recall Mr. Roesler testifying about a conversation
15 a customer told him that you had about the lawsuit and about
16 technicians no having a licenses or interns, or something like
17 that?

18 A I don't recall.

19 Q Do you recall Mr. Roesler testimony about that?

20 A Yes. Yes.

21 Q Do you deny telling a customer that Thompson Safety
22 employees are not licensed or didn't have insurance or
23 something like that?

24 A I do not deny it.

25 Q And you said that to try to get the business?

1 A No.

2 Q Because you didn't get the business, right?

3 A I don't know who you're talking about, so I can't say yes
4 or no.

5 Q Okay. Do you deny soliciting or calling on customers at
6 Thompson Safety or Sterling after the Court entered the TRO?

7 A Yes.

8 Q So, okay, so you deny calling on Thompson Safety
9 customers after the TRO was entered?

10 A Yes.

11 Q And you deny calling on Sterling customers after the TRO
12 was entered?

13 A No.

14 Q You don't deny that?

15 A I don't deny calling on Sterling customers, no.

16 Q After the TRO was entered?

17 A Correct. I don't remember the exact date, but I believe
18 you're correct.

19 Q And when you were at Thompson Safety, you had access to
20 route cards?

21 A Yes.

22 Q Those route cards had the schedule frequency for each
23 customer that needs to be serviced?

24 A Yes.

25 Q Did you make copies of those route cards before you

1 resigned from Thompson Safety?

2 A Yes, I was in charge of printing them.

3 Q So you knew what upcoming customers would need to be
4 serviced?

5 A Correct. But I've been doing it for years, so it's not
6 even necessary.

7 Q So you had -- you had Thompson's pricing and you had the
8 route cards?

9 A Thompson's pricing is completely independent of Jones
10 Fire's pricing.

11 Q That's not my question. My question or my question is --
12 okay, I'll ask a more precise question.

13 My question is you have Thompson Safety pricing, you have
14 Sterling pricing and you have the route cards, right?

15 A Yes.

16 Q And you're aware that the Court entered the Temporary
17 Restraining Order against you on July 24th, 2024?

18 A Yes.

19 MR. LOMBARDINO: And I'd like to have share my
20 screen. Okay, there it is.

21 THE COURT: We're turning it on now.

22 (Pause in the proceeding.)

23 MR. LOMBARDINO: Thank you, Your Honor.

24 BY MR. LOMBARDINO:

25 Q Okay, can you see the screen in front of me?

1 A Yes.

2 Q Have you seen this document or a copy of it before?

3 A Yes.

4 Q And for the Record what I've pulled up is the order TRO
5 granting -- the order granting application for a restraining
6 order. I'm just referring to it as TRO for short. And it's
7 Docket No. 13, Docket No. 13.

8 Okay, so I'm going to scroll down a little bit.

9 Looking at page 2 of the TRO there are certain
10 requirements that the Court ordered that you must comply with.
11 And I'm going to go through a few of them.

12 The first one is that Defendant -- which is both you and
13 your co-defendant -- are enjoined from breaching the
14 employment agreement.

15 Do you understand that was in the TRO order?

16 A Yes.

17 Q And did you take steps to comply with paragraph 1 on
18 page 2 of the TRO order?

19 A It's hard to comply with a vague TRO.

20 Q So the answer is no?

21 A No.

22 Q And then paragraph number 2 says that Defendants are
23 enjoined from continuing to employ Jones Fire.

24 Are you and Mr. Jackson still employed by Jones Fire?

25 A Yes.

1 Q And I'll skip three because you've already testified to
2 that. And I'm skipping four because you've already testified
3 to that.

4 Step five. In paragraph 7 it orders you and Mr. Jackson
5 to return all Thompson and that includes Sterling interaction
6 and documents.

7 Did you comply with paragraph 7 on page 3 of the TRO
8 order?

9 A Uh-huh. Yes.

10 Q What did you do to comply?

11 A I don't have any Thompson property.

12 Q How do you not have any Thompson documents?

13 A A lot of Thompson -- I've had Thompson documents --

14 THE COURT: One second counsel. Can you-all speak
15 up? The ERO can't hear you. And maybe move the microphone
16 closer to you and speak a little bit clearer, everyone.

17 THE WITNESS: Sure. Okay.

18 Yes, I have Thompson documents.

19 MR. LOMBARDINO: I just switched microphones.
20 Hopefully I come through clearer, Your Honor.

21 THE COURT: Yeah, it's clearer. Okay.

22 BY MR. LOMBARDINO:

23 Q So what steps have you taken to return the Sterling
24 documents and the Thompson documents to Thompson?

25 A None.

1 Q Okay, paragraph 8 says Defendants must also turn over
2 their computers, cell phones, and accounts for forensic
3 analysis. Have you or Mr. Jackson complied with paragraph 8
4 of the Court's TRO?

5 A No.

6 Q Okay.

7 MR. LOMBARDINO: Pass the witness.

8 THE COURT: You can do Direct at this time, counsel
9 for Defendants.

10 MR. CRESCENZO: Okay, thank you, Judge.

11 DIRECT/CROSS-EXAMINATION

12 BY MR. CRESCENZO:

13 Q Mr. Jones, you indicated that you have Thompson documents
14 in your possession?

15 A Yes.

16 Q What Thompson documents do you have in your possession?

17 A Probably a record of their employee handbook. That's
18 about all that I know.

19 Q To your knowledge that's the only document you have in
20 your possession?

21 A Yes.

22 Q Did you do work for Thompson Safety up until the point --
23 in the time frame between when you started, when you
24 incorporated Jones Fire and submitted your resignation to
25 Thompson?

1 A Can you repeat the question?

2 Q Sure. Did you -- you indicated or did you continue to do
3 work on behalf of Thompson Safety in between the time that you
4 started Jones Fire and resigned from them?

5 A I did not do any work for Jones Fire prior to my
6 resignation from Thompson.

7 Q Did you do exclusively work for Thompson Safety up until
8 your resignation?

9 A Correct.

10 Q Did you do that work to the best of your ability?

11 A Yes.

12 Q Did you email a copy of the Thompson price list to
13 yourself?

14 A Yes.

15 Q Okay. Let me finish my question it's going to be
16 confusing for everybody on the (indiscernible) to hear that.

17 So you did -- you emailed yourself the price list. Why
18 did you email yourself the price list?

19 A Because at the start of the new year they increased.
20 They had a price increase and I wasn't sure what I should
21 charge the customers. And they are sometimes where I'm in a
22 remote area where I don't have access to pull up the documents
23 that they sent to me.

24 And they sent it to everybody. So I printed it so that I
25 could have access to give the customers that information if

1 they requested it from me.

2 Q Have you ever used any information on that price list in
3 furtherance of your work for Jones Fire?

4 A No. That was independent from Jones Fire.

5 Q To your knowledge what is the amount of gross revenue
6 that Jones Fire has made up until this point?

7 A Gross revenue, about 80,000.

8 Q Do you know what your net revenue is?

9 A Yes.

10 Q If this injunction is entered, how is that going to
11 affect you?

12 A My life -- this is my livelihood now. My business.

13 Q Do you have a family?

14 A I do. I am expecting a baby in two months and lots of
15 animals.

16 MR. CRESCENZO: No further questions, Your Honor.

17 THE COURT: Counsel, you may also Direct this
18 witness.

19 MR. WINKELMAN: I don't have any questions.

20 THE COURT: Oh. No questions or next -- I couldn't
21 hear.

22 MR. WINKELMAN: I have no questions, Your Honor.

23 THE COURT: Anything further, Mr. Lombardino?

24 MR. LOMBARDINO: Just one or two questions, Your
25 Honor, if I may?

1 REDIRECT EXAMINATION

2 BY MR. LOMBARDINO:

3 Q So you mentioned earlier that you do have Thompson
4 documents and that you do have Sterling documents, correct?

5 A Correct.

6 Q And we don't really know what you have or what you don't
7 have since you did not comply with the Court's order to turn
8 over your devices and accounts, right?

9 A Correct.

10 Q Do you agree that you're in the position to use the
11 pricing list because you were in possession of it?

12 A No.

13 Q You don't agree that you were in a position to use it?

14 A No.

15 Q Did you delete it?

16 A I've never -- yes, I have deleted it. I don't have it
17 anymore.

18 Q When did you delete it?

19 A Probably right when I left.

20 Q Okay, so we can't confirm that because you haven't turned
21 your device over for forensic analysis, right?

22 A Yeah, because my property doesn't belong to
23 (indiscernible).

24 Q You believe the pricing list was your property?

25 A No.

1 MR. LOMBARDINO: No further questions, Your Honor.

2 THE COURT: Anything further from Defendants?

3 MR. WINKELMAN: I have no questions for this
4 witness, Your Honor.

5 MR. CRESCENZO: Nothing for me either, Judge.

6 THE COURT: Then this witness may be excused.

7 (Witness steps down.)

8 THE COURT: Before we get to the next witness, I
9 just want to know, am I going to hear any evidence from any
10 client -- any clients in this case that the Defendants
11 allegedly talked to or spoke with or, you know, gave any
12 information to from their former employer?

13 Have you decided -- I mean, it's not -- I'm not
14 asking for one, I just want to know am I going to hear that
15 any testimony from your side about that?

16 MR. WINKELMAN: Not from us, Your Honor.

17 MR. LOMBARDINO: I'm not understanding your
18 questions, Your Honor.

19 THE COURT: Okay. Well, what the issue is that the
20 Defendants are taking this information and then using it to
21 solicit clients or undercut your client in competing for the
22 business of those clients. And I was just curious whether or
23 not I'm going to hear any information from the client's
24 perspective.

25 MR. LOMBARDINO: So we are not prepared at this time

1 to call any clients especially in this hearing. But we also
2 don't have the discovery that was ordered to be produced to
3 know whether certain communications were had or not had,
4 et cetera.

5 So it sort of deprived us to explore that issue.

6 THE COURT: Okay.

7 MR. LOMBARDINO: And that's one of the things that I
8 will talk about in argument. But you wanted to jump into
9 evidence. And so we just kind of skipped that part of it.

10 THE COURT: Great. Thank you. That's what I needed
11 to hear.

12 Okay. Ms. Gad or Mr. Lombardino, you may call your
13 next witness.

14 MR. LOMBARDINO: Okay, so this just to speed things
15 up. Counsel -- the only two questions I was going to ask
16 Mr. Jackson is that, you know, whether or not he admits
17 signing the employment agreement. Because I don't want to
18 belabor, but I just -- all we went through. But if you-all
19 could stipulate that he did sign them, then I'm just going to
20 not call him and you can tell him.

21 MR. CRESCENZO: Yeah, we can stipulate. I stipulate
22 that he signed the agreement.

23 MR. LOMBARDINO: Okay, and I reserve the right to
24 Cross, but I'll just let you-all do it and if I don't feel
25 like it, it might save us some time.

1 MR. CRESCENZO: That's good.

2 MR. WINKELMAN: Thank you, Michael.

3 THE COURT: Okay. Great. So, are there any other
4 witnesses?

5 MR. WINKELMAN: So Your Honor, Lee Winkelman. I'm
6 going to call Justin Jackson.

7 MR. LOMBARDINO: So we'll -- I guess we'll,
8 quote/unquote, "rest" our case.

9 THE COURT: You can call him in your case, but they
10 can direct him, so you're good.

11 MR. LOMBARDINO: Yeah, yeah. Okay.

12 THE COURT: Mr. Jackson, if you could raise your
13 right hand?

14 (Witness sworn.)

15 THE COURT: And before you start, counsel. I just
16 need to take a three-minute break. I want to grab a bottle of
17 water. I've been talking all afternoon. And then we'll be
18 right back, okay? And maybe you guys can take a quick break
19 as well.

20 MR. LOMBARDINO: Thank you, Your Honor.

21 THE COURT: No problem.

22 (Recess taken from 5:35 p.m. to 5:45 p.m.)

23 THE COURT: Okay, Counsel. This is Judge Hanks.
24 I'm back again.

25 MR. LOMBARDINO: Thank you, Your Honor.

1 THE COURT: Okay, you may continue. I know I just
2 swore in the witness, so you may proceed.

3 DIRECT EXAMINATION

4 BY MR. WINKELMAN:

5 Q Great, Mr. Jackson, can you please introduce yourself for
6 the Record?

7 A Justin Jackson.

8 Q You worked for Sterling actually two separate times,
9 didn't you?

10 A Yes, sir.

11 Q Okay, I want to talk about the first time you worked for
12 Sterling. When you did you start working for Sterling
13 initially?

14 A Approximately April of 2011.

15 Q Okay. And do you remember signing an employment
16 agreement with them when you started?

17 A Yes, sir. Back in April of '11.

18 Q Were you aware at the time that you signed it that it
19 contained a provision that dealt with the use of certain
20 information?

21 A No, sir.

22 Q Okay. So you're not aware that it had a confidentiality
23 agreement in it?

24 A No, sir.

25 Q Were you aware that it had a non-compete?

1 A Yes, sir.

2 Q And what was your understanding of the non-compete?

3 A We couldn't work for a competitor that performed the same
4 services as Sterling.

5 Q Okay.

6 THE COURT: Okay, counsel. I'm sorry. We can't
7 hear. You're going to have to move the microphone a little
8 bit closer or speak up.

9 MR. WINKELMAN: Okay. We're as close as we can get.
10 I huddle over here, so I'm going to try to be loud.

11 THE COURT: Okay.

12 BY MR. WINKELMAN:

13 Q Okay, so do you recall how long the non-compete was for?

14 A Two years.

15 Q Okay. And what kind of work did you do for Sterling?

16 A I initially started off doing first aid the first few
17 months -- four or five months. And then I transferred over to
18 doing fire and safety.

19 Q Okay. You worked as a fire technician; is that correct?

20 A Yes, sir.

21 Q Okay. And could you just briefly explain what servicing
22 fire extinguishers involves?

23 A I would go into the customer. I would check the
24 extinguisher, make sure there was no damage, make sure that
25 the gauge was still in the green. I would check the date of

1 the extinguisher to see the age of it to see if there was any
2 additional service work that needed to be provided to it.

3 Q Okay. And were you -- was part of your job to maintain
4 the business relationship with the customer?

5 A Yes, sir.

6 Q Okay. Now was part of your job there to offer other
7 products and services?

8 A No, sir. It pertained to fire extinguishers or the fire
9 part of the business. No, sir.

10 Q Okay. And the first time that you worked there, were you
11 working full time or part time?

12 A Full time.

13 Q Okay, and when did you leave Sterling for the first time?

14 A December 31st of 2014.

15 Q Okay. And so where did you go to work?

16 A I went to work full time at a private immigration
17 facility.

18 Q Okay. So your non-compete then with Sterling would have
19 run in 2016; is that correct?

20 A Yes.

21 Q And did you come back to work for Sterling ultimately?

22 A Yes.

23 Q When was that?

24 A The beginning of November 2016.

25 Q And did you sign another agreement when you came back?

1 A No.

2 Q Okay. When did you start working for Thompson?

3 A September 5th, I believe it was, of 2023 when they
4 acquired Sterling.

5 Q Was your work for Thompson different from what you were
6 doing at Sterling?

7 A It was servicing fire extinguishers.

8 Q Okay. Was it different working for Thompson than it was
9 working for Sterling?

10 A Yes, it was different.

11 Q How so?

12 A Sterling was more of a small mom and pop company where
13 you could build a relationships with the staff and build
14 relationships with the customers. We had time to talk to the
15 customers to build that personal relationship with them versus
16 with Thompson they were more worried about just making the
17 money and they'd rush you from customer to the next and we
18 didn't have time to build any kind of relationship with any of
19 the Thompson customers.

20 Q Got you. Okay.

21 Did Thompson's prices increase whenever they took over?
22 I'm sorry, scratch that, strike that.

23 When Thompson took over for Sterling, were their prices
24 higher than Sterlings?

25 A Yes.

1 Q Okay. Do you remember signing an employment agreement
2 with Thompson?

3 A Yes.

4 Q When did you sign that?

5 A September 5th, the day that they acquired -- that we were
6 told that they acquired Sterling. We were told that we had to
7 sign it if we wanted to stay employed.

8 Q Okay, so it was given to you on a take it or leave it
9 basis?

10 A Yes.

11 Q And how was it given to you?

12 A On a tablet for us to sign.

13 Q Okay. Did they give you time to read it before you
14 signed it?

15 A Not really.

16 Q Did you ever get a copy of it?

17 A Not that I recall. I never got a paper copy of anything.
18 And I don't recall getting an email.

19 Q At the time that you signed it, were you aware that it
20 contained a confidentiality provision that you required you to
21 keep certain information secret?

22 A No.

23 Q How about a non-compete?

24 A Yes.

25 Q Now did anyone at Thompson go through the agreement with

1 you to explain it to you?

2 A No, not of the confidential. None of that was explained.

3 Q None of the terms of the agreement were?

4 A No, sir.

5 Q Okay. And when you worked for Thompson was that on a
6 full time basis or a part time basis?

7 A Part time.

8 Q Okay. So you were working part time for Thompson. And
9 about how many hours were you working?

10 A It varied. Some weeks it would liable to be 20 hours.
11 Other weeks liable to be 30.

12 Q And how much were you making?

13 A Seventeen an hour.

14 Q So on a monthly basis, about how much is that?

15 A Any where from 15 to 2,000 a month.

16 Q 1500?

17 A 1500 to 2000 a month.

18 Q Okay, can you talk about what you did for Thompson?

19 A I would go and inspect the extinguishers, check the
20 dates, make sure there was no damage to the extinguishers. If
21 there was any work that needed to be performed other than
22 inspections, then we would swap them out.

23 Q All right. And still responsible for servicing the
24 customers?

25 A Yes, sir.

1 Q I believe you testified earlier though that there wasn't
2 must establishment of customer relationships, correct?

3 A No, sir. I didn't establish any relationships really
4 with any of the Thompson customers because we were always
5 being rushed to go to the next one. They were more worried
6 about bringing money in than actually building a relationship.

7 Q And what areas -- what geographic areas did you work in
8 for Thompson?

9 A North Houston, Conroe, Woodlands. The same place that we
10 covered for Sterling. Any of the Thompson customers I did
11 most of those were either close to their office on Wakehaven
12 (phonetic) or further south.

13 Q Okay. So really in the North Houston area?

14 A North Houston was all Sterling customers. There was only
15 a few Thompson that I took care of.

16 Q Okay. Did you work anywhere else? Any other areas?

17 A I'd been sent out to Orange to do a customer that nobody
18 else wanted to do.

19 Q Okay. Did you ever went as far as Dallas or anything,
20 did you?

21 A No.

22 Q Were you responsible for offering other products and
23 services that Thompson provided to these customers other than
24 fire extinguishers?

25 A Just fire.

1 Q Were you responsible for bringing in any business?

2 A No, they wouldn't allow us to bring in new business.
3 That was a different department.

4 Q Now when Thompson bought Sterling and they took over, did
5 customers leave Thompson initially?

6 A Yes, there were several Sterling customers that left.

7 Q Okay. And what was your understanding as to why they
8 left?

9 A The pricing was significantly higher, so they didn't want
10 to pay the higher prices. And they also wanted to deal with a
11 smaller mom and pop, so they could have that personal
12 relationship versus just being a number or just being a client
13 of a larger company. They preferred the personal
14 relationship.

15 Q Okay. Now while at Thompson, did you have a company
16 phone there?

17 A No.

18 Q Okay. What phone did you use?

19 A My personal.

20 Q So the Thompson clients have your personal cell phone
21 number?

22 A Yes.

23 Q Okay. If they were to call you then now wanting to --
24 wanting to talk to somebody at Thompson, it would go to your
25 personal cell phone?

1 A Yes.

2 Q Have you had any clients call since you left?

3 A Yes.

4 Q What did you tell them?

5 A I told them they needed to contact the Thompson office.

6 Q Okay. Who are you currently employed by?

7 A Jones Fire Protection.

8 Q When did you begin working there?

9 A April of '24.

10 Q Are you working there full or part time?

11 A Part time.

12 Q About how much are you making?

13 A 500 a week.

14 Q And why did you go -- why did you leave Thompson to go
15 work for Jones Fire?

16 A I left from Thompson due to the fact that they had
17 service technicians that had a fire license that were passing
18 their license off to non-licensed employees for them to go do
19 inspections. And I didn't want to get caught up in any of the
20 legal ramifications of that. And I had had a take home
21 vehicle to begin with.

22 And when the new GM took over, I had that vehicle pulled
23 where I was no longer allowed to take it home. So it was no
24 longer financially viable for me to make the drive down there
25 in my personal vehicle versus using a company vehicle.

1 Q Okay, so you were concerned about your own, I guess,
2 liability for criminal violations that were being committed?

3 A Yes, sir. I didn't want to get drawn up in an
4 investigation or have to deal with any of that due to other
5 Thompson employees doing illegal activities.

6 Q Did you actually ultimate make a complaint to the Fire
7 Marshal about that?

8 A Yes.

9 Q Do you know what happened with that?

10 A I do not. I haven't heard back.

11 Q When you were at Sterling or Thompson, the supplies
12 either place, did you ever receive any sort of specialized
13 training?

14 A No.

15 Q Okay. At Sterling or Thompson did you ever receive any
16 training on what was considered to be secret or confidential
17 information?

18 A No.

19 Q At Sterling or Thompson, did you ever receive any
20 training on what company information should be shared and what
21 company information should not be shared?

22 A No.

23 Q Did anyone at Sterling or Thompson ever discuss
24 confidential information with you and the need to keep it
25 secret?

1 A No.

2 Q Did you receive any training at Sterling or Thompson of
3 what was considered a trade secret?

4 A No.

5 Q Did anyone at Sterling or Thompson ever discuss trade
6 secrets with you and the need to keep it secret?

7 A No.

8 Q Okay. Did you ever receive, while at Sterling or
9 Thompson, any document ever marked as confidential?

10 A No.

11 Q Did you ever receive anything that you were told to keep
12 confidential?

13 A No.

14 Q Did you ever receive anything that you were told was a
15 trade secret?

16 A No.

17 Q Okay. Are you aware of any policy that Sterling or
18 Thompson that would indicate what information -- company
19 information should or should not be shared?

20 A No.

21 Q While at Sterling or Thompson, did you ever receive
22 compilations of market information?

23 A No.

24 Q Did you ever receive a customer list?

25 A No.

1 Q At Sterling or Thompson, did you ever receive any
2 business plans?

3 A No.

4 Q At Sterling or Thompson, did you ever receive any
5 internal financial statements?

6 A No.

7 Q At Sterling or Thompson, did you ever receive any
8 internal financial analysis?

9 A No.

10 Q At Sterling or Thompson, did you ever receive any
11 personal files or evaluations?

12 A No.

13 Q While you were at Sterling or Thompson, did you ever
14 receive any internal cost information?

15 A No.

16 Q Let me ask you a question. Can you determine Thompson's
17 customers from publicly available information?

18 A Yes.

19 Q And how would you go about doing that?

20 A I can go on their website and under the customer reviews
21 they've seen in order to know which customers they take care
22 of. Or I can simply get information by walking in any
23 business that has fire extinguishers and looking at the tag to
24 know if Thompson services them or if another company does.

25 And to also find out when they're due.

1 Q Okay. Right, which would you give some clue as to what
2 the -- that customer's needs are, correct?

3 A Correct.

4 Q So you're able to find customer information and customer
5 needs publicly?

6 A Yes.

7 Q And how about pricing? Could you get the pricing
8 information publicly?

9 A Yes.

10 Q And how would you go about doing that?

11 A The customer would give it to me.

12 Q Let me ask you another question. Final -- coming up here
13 on the end. Would you suffer any economic hardship if you
14 were unable to work for Jones Fire?

15 A Yes.

16 Q Okay, how so?

17 A I rely on the income from there to help pay my bills.

18 Q So you would be unable to support your family?

19 A Correct. Yes.

20 Q Okay.

21 MR. WINKELMAN: No further questions.

22 I pass the witness.

23 CROSS-EXAMINATION

24 BY MR. LOMBARDINO:

25 Q So you were kind of asking questions about how you

1 could -- how you could find a Sterling or Thompson customer,
2 Sterling customer. And you talked about you could go just go
3 into and look at the tag.

4 Do you remember him asking you about that?

5 A Yes.

6 Q But that's not what you-all did, right? You-all didn't
7 do that?

8 A I have knowledge of the customers for the simple that
9 I've done this for over a decade.

10 Q Right, exactly. And your employment agreement, it does
11 contain a provision about confidentiality, right? You don't
12 deny that?

13 A I don't know if it's in there or not.

14 Q When you were given the employment agreement to sign, did
15 you ask for an opportunity to read it?

16 A They were rushing us through it to sign it or not be
17 employed.

18 Q When you were given the employment agreement to sign, did
19 you ask for an opportunity to read it?

20 A We were rushed through it so I didn't get an opportunity
21 to read it because they were rushing us to sign a bunch of
22 different documents at the time that we were acquired.

23 They --

24 Q Did you ask for an opportunity to read it?

25 A Again, I would like to read it, but they were still

1 rushing us to sign it.

2 Q Did you ask for a copy of it?

3 A They said they was supposed to give us a copy and I never
4 received -- I know I didn't receive a hard copy and I don't
5 recall getting an email copy either.

6 Q Did you ask for a copy of it?

7 A No, because they said they were going to send it to us.
8 I don't need to ask if they're offering to send it to me.

9 (Pause in the proceeding.)

10 Q Sterling customers are Thompson customers, right?

11 A Sterling customers are Thompson customers?

12 Q Well, when Thompson bought Sterling, didn't Sterling
13 customers become Thompson customers; as far as you know?

14 A No. They never did business with Thompson and it
15 wouldn't be a Thompson customer.

16 Q But Thompson purchased Sterling's customer relationships
17 as part of the transaction when Thompson bought Sterling. Did
18 you understand that?

19 A They may have bought the business relationship, but they
20 didn't buy my personal relationship at all.

21 Q And would you agree with me that that's the point of a
22 non-solicit is to help protect the personal relationships that
23 you built on behalf of Sterling, on behalf of Thompson?

24 A If the customer denied and didn't want to be serviced
25 with Thompson, then I wouldn't be taking anything away from

1 Thompson once I leave Thompson.

2 Q But on the other hand, there's other companies that the
3 customer can go to for services besides Jones Fire, right?

4 A Right.

5 Q So if they're unhappy with Thompson or Sterling, there's
6 plenty of other companies that they can go to?

7 A Correct.

8 Q And what customer reviews were you talking about online?

9 A If you go to the Thompson website, they encourage the
10 customer to leave reviews about Thompson. That tells me who
11 the customer is and who they service, doesn't it?

12 Q So does -- is it your testimony that all of Thompson's
13 customers and all of Sterling's customers are on the website?

14 A I did not say all of them. I said some.

15 Q And is the review the person's name or is it their name,
16 their contact information, who is in charge of making
17 decisions about your current fire equipment, et cetera?

18 A It's the company name and some of them have the name of
19 the person that left it. So if they're the ones that left it,
20 common sense would tell you most likely they are either in
21 purchasing or the person that makes that decision.

22 Q Okay. And are you aware that compilations of publicly
23 available information can be a trade secret?

24 MR. WINKELMAN: Objection, that calls for a legal
25 conclusion.

1 THE COURT: The objection was -- I'm sorry I
2 couldn't hear it.

3 MR. WINKELMAN: It calls for a legal conclusion.

4 THE COURT: Objection overruled.

5 The witness can answer with respect to his own
6 understanding. Any legal testimony he provides, the Court
7 won't accept.

8 Okay, you may proceed.

9 BY MR. LOMBARDINO:

10 Q Are you aware that compilations of publicly available
11 information can be considered trade secrets?

12 A No.

13 Q I'm sorry?

14 A No.

15 Q And the Sterling customers since -- I've noticed you and
16 Mr. Jones are distinguishing between Sterling customers and
17 Thompson customers. So I'm asking about Sterling customers.

18 My question will start now. Sterling customers that you
19 claim left, were those after Thompson took over but before
20 Jones left, Jones Fire was started. Were those customers that
21 you were referring to your customers?

22 A What do you mean by "my" customers?

23 Q Well, okay. The customer relationship -- the customer
24 relationships that you managed --

25 A Okay.

1 Q -- filling in for Thompson and I know that most of them
2 were, historically speaking, for Sterling, right?

3 A Okay.

4 Q So when your attorney was asking you questions, one of
5 the things that you said was that there were Sterling
6 customers that left once Thompson took over.

7 Do you understand saying that?

8 A Yes.

9 Q Okay, those Sterling customers that left, were those
10 customers that you were managing?

11 A Customers that I took care of? Yes.

12 Q Okay. Of the -- to the best of your knowledge of the 105
13 or so customers that -- strike that.

14 To the best of your knowledge how many customers does
15 Jones Fire have that are not former Thompson customers or
16 former Sterling Customers?

17 A I would not know that.

18 Q Can you give me the name of one customer that you know --
19 that you would know of that is not a former Sterling or former
20 Thompson customer?

21 A I couldn't do that because I don't know all the customers
22 that Jones takes care of.

23 Q Right. So I'm talking of the customers that you take of.
24 Are any of the customers that you take care of -- were any of
25 them -- and I'm talking about while -- now that you're at

1 Jones Fire.

2 A Uh-huh.

3 Q Any of the customers that you take care of, are there any
4 of that were not former Thompson customers or former Sterling
5 customers?

6 A Not that I can think of off the top of my head.

7 Q And do you remember the questioning that I was asking
8 Mr. Jones about the TRO order and whether taking any steps to
9 comply with the TRO order?

10 A Yes.

11 Q Have you taken any steps to comply with the TRO?

12 A No.

13 MR. LOMBARDINO: Pass the witness.

14 MR. CRESCENZO: I have no questions, Your Honor.

15 THE COURT: I'm sorry?

16 MR. CRESCENZO: I said I have no questions.

17 THE COURT: You have no questions? I couldn't hear.
18 I'm sorry.

19 MR. WINKELMAN: Right, Your Honor. He said he has
20 no questions. I think we can be done with this witness.

21 THE COURT: Okay. I couldn't hear. I'm sorry.

22 MR. WINKELMAN: I believe we're done with the
23 witness, Your Honor.

24 THE COURT: Okay. Great. This witness may be
25 excused then. Thank you, sir.

1 (Witness steps down.)

2 THE COURT: The next witness? Mr. Lombardino or
3 Ms. Gad?

4 MR. LOMBARDINO: We have no further witnesses to
5 call. We assumed that was going to be that trial hearing and
6 just load up and just have tons of witnesses, so. That's all
7 who we are prepared to call at this time.

8 THE COURT: Great.

9 And Defendants? Any other witnesses that you wish
10 to call?

11 MR. WINKELMAN: No, Your Honor.

12 THE COURT: Okay, then. Well, thank you-all then
13 for your time and patience. What I'd like for you to do is
14 submit to me just a brief two-page summary argument based on
15 the evidence that you heard -- that the Court heard that the
16 parties presented. And how that evidence supports the
17 arguments that you made in your briefing before the temporary
18 injunction and then in opposition to the temporary injunction.

19 And if you can get that on file by next Tuesday,
20 then I will get an answer back to you by the end of next week.

21 MR. WINKELMAN: Thank you, Your Honor.

22 MR. LOMBARDINO: Thank you, Your Honor.

23 The one point that I'd like to make is that the TRO
24 that you implemented expired yesterday. So there currently is
25 no order in place restricting anything and then we also still

1 have to deal with the issue of the devices not -- never being
2 turned over. Is that -- I know we're here late and everyone
3 needs to get going, but you know, is that something that we
4 can talk about right now or?

5 THE COURT: Sure, we can talk about it. I guess the
6 first thing is, I think the parties need to sit down and
7 figure out, you know, how to maintain the status quo until the
8 Court gets a ruling. I can't get a ruling right now for you.

9 I like to hear -- I like to see, you know, what you
10 believe the evidence showed. But I want it in writing. I
11 don't want to do this by oral argument.

12 So, I think the parties need to get together and
13 maintain the status quo. So basically the changing at this
14 point doesn't help anyone. I think that the parties need to
15 maintain the status quo until I can get your briefing and then
16 I'll get an answer back as quickly as I can.

17 If either side -- I don't know if one side is, you
18 know, using trade secret information. I don't know if it is
19 or it's not happening. It's not clear to me yet. I want to
20 hear your arguments.

21 But I think that the parties should have some middle
22 ground as to what should or should not be done. I mean, the
23 TRO is expired. I had conditions on the TRO. You know, those
24 weren't complied with, but then Defendant's argument is, is
25 that they weren't there for the hearing. Didn't know about

1 them. Didn't understand everything. Thought they were vague.

2 I can deal with that a little later from arguments
3 from the side. But basically I need you guys to get together
4 to maintain the status quo until I can get a ruling out.

5 If you can't do that, let me know and I'll still get
6 the ruling out as quickly as I can.

7 MR. LOMBARDINO: Well, --

8 THE COURT: I think that's the first step.

9 MR. LOMBARDINO: With respect, there is no -- they
10 never complied with the status quo is that they're going to
11 keep doing everything that they've been doing. That's okay.

12 THE COURT: Well, have you -- no, no. Have you sat
13 down and talked to them about what they're doing and whether
14 or not there's some middle ground that you guys can reach?

15 MR. LOMBARDINO: We --

16 THE COURT: I don't know. Have you done that?

17 MR. LOMBARDINO: We will make a concerted effort to
18 do that. We did propose some potential resolutions back and
19 forth. And, you know, if we need to try to do that. But I
20 think the parties kind of had our vastly different on -- have
21 that vastly different perspectives on what's going on.

22 THE COURT: Okay. Well, I can't get a ruling out to
23 you any quicker than next week. So, you know, the bottom line
24 is I think it's in everyone's best interest to try to agree --
25 reach some sort of temporary agreement until I can get a

1 ruling out.

2 Not reaching an agreement doesn't really help
3 anyone. So I think you probably need to sit down and talk
4 about it. But regardless whether you enter an agreement or
5 not, I can't get you an answer back tonight. And I can't get
6 you an answer back tomorrow.

7 The earliest I'll get an answer back to you is on
8 Tuesday. And that's realistic. So, I would encourage you to
9 get together and talk to each other and have a conversation
10 about how to maintain the status quo.

11 Maybe if you start talking you might agree. I mean,
12 the Defendants believe they're not doing anything wrong. You
13 believe they're doing things wrong. Maybe you can come up
14 with some areas of agreement as to what both sides agree that
15 should not be done.

16 Like taking customer lists and using that pricing
17 information. Probably not -- shouldn't be done. I don't know
18 if it is or not, but probably shouldn't be. So I think
19 there's some area where the parties could probably reach an
20 agreement.

21 And if you can't, you can't. That's great. And
22 then you know, I'll rule and move on.

23 MR. WINKELMAN: Mike, I think we can -- I think
24 there's more common ground than you think.

25 MR. LOMBARDINO: Okay.

1 THE COURT: I bet you there is.

2 MR. WINKELMAN: Yeah, we'll continue those
3 conversations.

4 THE COURT: I think that's where you need to start.
5 Usually what happens in these cases -- and you guys are good
6 lawyers. You know you've done it a thousand times like me.
7 You need to get the parties together and start with, okay,
8 what is it that we all agree that should not be done, you
9 know, under the terms of the non-compete agreement or the
10 covenants.

11 That's where the parties typically start. You know,
12 what do we all agree we should not be doing or no one should
13 be doing. Pretty much that -- there is some common ground
14 there because, you know, very rarely does one side say you
15 know what? I want the entire covenants opt out. It's not
16 going to be applicable.

17 I'm willing to die on this sword and say that I'm
18 never going to comply with any -- I'm going to use information
19 as I want. I'm going to see as many clients as I want and do
20 whatever I want because the covenants just not -- is void.

21 Happens every now and then, but very rarely.
22 Usually everybody agrees that there's certain things that the
23 parties should not be doing. And you start from there.

24 And then from there -- that's typically in all these
25 cases. And then from there see how far you can get. But

1 bottom line is I'm not going to be able to rule until next
2 Tuesday. So between now and then, it's good for you to talk,
3 one. And then two, get me no more than a three-page brief
4 summarizing what you believe the evidence to show this
5 afternoon and how that evidence supports the claims that
6 you've made.

7 MR. WINKELMAN: Your Honor, just to clarify that
8 could be filed anytime on Tuesday?

9 THE COURT: It needs to be filed by Monday.

10 MR. WINKELMAN: Monday, okay.

11 THE COURT: Yes, Monday. Because Tuesday I'm going
12 to try to -- if you guys haven't reached any agreement, then
13 I'm going to rule as quick as I can on Tuesday. If you reach
14 an agreement, it'll probably be Tuesday evening -- I mean,
15 Tuesday morning.

16 But if you haven't reached an agreement -- well, if
17 you have reached an agreement the answer will probably be
18 Tuesday evening. If you haven't reached an agreement then I'm
19 going to get to it first thing on Tuesday.

20 Well, not first thing. I will get it out first
21 thing on Tuesday.

22 MR. CRESCENZO: Great, thank you, Your Honor.

23 MR. WINKELMAN: Thank you, Your Honor.

24 THE COURT: Okay. No problem. Thank you-all for
25 your patience. I know its been a long afternoon. But it been

1 even longer for the lawyers that are coming up next. So you
2 guys have a great evening and we'll talk again on Tuesday.

3 And if you have any -- and if there's anything you
4 think that I can help you with, please let me know.

5 MR. WINKELMAN: Thank you, Your Honor.

6 MR. CRESCENZO: Thank you, Your Honor.

7 THE COURT: Take care everyone. You may be excused.
8 Good night.

9 (Proceeding adjourned at 6:14 p.m.)

10 * * * * *

11 *I certify that the foregoing is a correct transcript*
12 *to the best of my ability produced from the electronic sound*
13 *recording of the Zoom proceedings in the above-entitled*
14 *matter.*

15 /S./ MARY D. HENRY

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